

**CASE NOTE: CIVIL PROCEDURE—SWIMMING UP THE
“STREAM OF COMMERCE”: CLARIFYING MINNESOTA’S
PERSONAL JURISDICTION POSITION AFTER ASAHI—
*JUELICH V. YAMAZAKI MAZAK OPTONICS CORP.***

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I. INTRODUCTION

Simply stated, personal jurisdiction represents a court’s power

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to bind parties to a judicial action.¹ However, during the last century, the conflicts and laws that have emerged across the United States to regulate personal jurisdiction are far from simple.² Particularly, the rationale for “hauling” foreign defendants into court has grown increasingly more complex due to advancing technology and expanding global markets.³ Although the U.S. Supreme Court has tried to provide answers, from the “minimum contacts” analysis to varying “stream of commerce” theories, personal jurisdiction remains a murky area for interpretation.⁴

Minnesota has not escaped the confusion that surrounds personal jurisdiction.⁵ In fact, in *Juelich v. Yamazaki Mazak Optonics Corp.*,⁶ the Minnesota Supreme Court was forced to analyze personal jurisdiction in light of the infamous U.S. Supreme Court plurality opinion *Asahi Metal Industry Co. v. Superior Court of California*.⁷ *Asahi* has placed a gray cloud over personal jurisdiction by articulating, but with divided support, a much stricter standard for defining “minimum contacts” and the “stream of commerce” theory in products liability cases.⁸ Nonetheless, *Juelich* manages to offer some clarity for Minnesota law by providing its own interpretation of *Asahi*, revisiting its position on the “stream of commerce” theory, and subsequently reaffirming its five-factor test for personal jurisdiction.⁹ Even though it neglects to elaborate on a broader issue of foreign-national defendants, the case is of

1. BLACK'S LAW DICTIONARY 857 (8th ed. 2004).

2. See RICHARD L. MARCUS ET AL., CIVIL PROCEDURE: A MODERN APPROACH 666 (3d ed. 2000) (noting that “jurisdiction has continued to plague lawyers, judges and law students” in describing the evolution of personal jurisdiction law).

3. See Kristin R. Baker, Comment *Products Liability Suits and the Stream of Commerce After Asahi: World-Wide Volkswagen is Still the Answer*, 35 TULSA L.J. 705, 708-13 (2000) (discussing growth in the international economy and the development of the “stream of commerce” theory of minimum contacts).

4. See Scott M. Hagel, Case Note, *Civil Procedure—The Stream of Commerce Theory in Minnesota: Does the Shoe Fit?* In re Minnesota Asbestos Litigation, 24 WM. MITCHELL L. REV. 231, 231-39 (1998) (criticizing the development of “minimum contacts” and “stream of commerce” theories in the United States).

5. *Id.* at 241-44.

6. 682 N.W.2d 565 (Minn. 2004).

7. *Id.* at 567-68 (citing significant similarities to *Asahi Metal Indus. Co. v. Superior Court of Cal.*, 480 U.S. 102, 104 (1987) (plurality opinion)).

8. Baker, *supra* note 3, at 705 (“*Asahi* further confused the issue because the Court split . . . over the amount of contact required in the stream of commerce analysis.”); see also Hagel, *supra* note 4, at 237 (“Rather than clarifying the area, a divided [*Asahi*] Court could agree only on the result.”).

9. *Juelich*, 682 N.W.2d at 568, 571-73.

significant importance due to its resolution of the "stream of commerce" application in Minnesota.¹⁰ In effect, *Juelich* rejects *Asahi's* stricter standard for placing products into the "stream of commerce" and suggests that either direct or indirect contacts with a forum may be sufficient for personal jurisdiction.¹¹

First, this Case Note explores the development of personal jurisdiction theory in the United States and how it has shaped current Minnesota law.¹² Then, it investigates the facts of *Juelich*¹³ and analyzes the Minnesota Supreme Court's decision considering the legacy of *Asahi*.¹⁴ Finally, it concludes that the *Juelich* court rightly rejects *Asahi's* stringent "stream of commerce" analysis and provides needed clarity to Minnesota's position, even if it avoids a more general issue concerning foreign-national defendants.¹⁵

II. HISTORY OF THE LAW

A. *The Power Theory*: *Pennoyer v. Neff*¹⁶

As acknowledged above, the U.S. Supreme Court has spent more than one hundred years attempting to create guidelines for personal jurisdiction.¹⁷ In fact, the original chief basis for personal jurisdiction dates back to the Supreme Court's 1877 decision in *Pennoyer v. Neff*.¹⁸ The *Pennoyer* Court developed the gold standard rule: jurisdiction is warranted when a defendant is *physically present* within a forum state and simultaneously *served there with process*.¹⁹

10. *Id.* at 575.

11. *Id.* at 571 ("This court has recognized that minimum contacts may be indirect, under the stream of commerce theory.").

12. *See infra* Part II.

13. *See infra* Part III.

14. *See infra* Part IV.

15. *See infra* Part V.

16. 95 U.S. 714 (1877).

17. Hagel, *supra* note 4, at 231 ("Over the last fifty years the United States Supreme Court has attempted to clarify [personal jurisdiction] standards . . ."). *See generally* Linda J. Silberman, "Two Cheers" for International Shoe (and None for Asahi): An Essay on the Fiftieth Anniversary of International Shoe, 28 U.C. DAVIS L. REV. 755 (1995) (discussing the past and potential future of personal jurisdiction).

18. 95 U.S. at 714. As the genesis of personal jurisdiction law, *Pennoyer* makes a party's presence within a forum the primary method for obtaining jurisdiction. *Id.* The Court defends its position in *Pennoyer* by adhering to "universal law." *Id.* at 720.

19. *Id.* at 714 (representing the U.S. Supreme Court's first significant rule

Essentially, the holding gave rise to the theory of “territorial power,” by declaring that every state may claim individual sovereignty over the persons, corporations, and land located within its boundaries.²⁰

Although the immediate *Pennoyer* rule dealt with establishing personal jurisdiction over natural persons, similar standards soon evolved for binding corporations.²¹ Specifically, a corporation was bound by traditional notions of personal jurisdiction if it was (1) incorporated in the forum state; (2) “doing business” there; or (3) had consented, either expressly or impliedly, to jurisdiction in that state.²² Nonetheless, as interstate commerce and business on a

regarding personal jurisdiction and a court’s power to bind parties to an action). “Service of process” refers to the action by which a complaint and summons, each in paper form, are delivered together to a named defendant. FED. R. CIV. P. 4. The summons is a piece of paper that represents the power of a court (federal or state) to bind the parties of the action so identified in the complaint. *Id.* Thus, the actual service of a summons represents the power to be bound. *Id.*

20. *Pennoyer*, 95 U.S. at 720. The *Pennoyer* Court stated, “[t]he authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established.” *Id.* *Pennoyer*’s notion of state sovereignty has further developed into the basis of transient jurisdiction, a court’s ability to obtain jurisdiction by serving a defendant when he or she is temporarily physically present in a state. MARCUS ET AL., *supra* note 2, at 674 (discussing *Grace v. McArthur*, 170 F. Supp. 442 (E.D. Ark. 1959), in which a court found personal jurisdiction over a defendant who was served with process while flying on a passenger airplane over the forum State of Arkansas). Subsequently, legal authorities have challenged the constitutional soundness of transient jurisdiction. See *Shaffer v. Heitner*, 433 U.S. 186, 202-03 (1977). Nonetheless, the Supreme Court, albeit in a plurality opinion of questionable precedential value, has continued to uphold its practice. See *generally* *Burnham v. Superior Court of Cal.*, 495 U.S. 604 (1990) (plurality opinion).

21. See MARCUS ET AL., *supra* note 2, at 685-86 (“[T]here developed a doctrine of corporate ‘presence’—a corporation was present where it engaged in a sufficient amount of activities, and it could therefore be . . . ‘doing business.’”). Rules for measuring personal jurisdiction can be distinguished between binding natural persons versus corporations. *Pennoyer*, 95 U.S. at 714. The criteria for power over natural persons, primarily derived from *Pennoyer*, are (1) defendant is served with process while physically present in the forum; (2) defendant is domiciled in the forum; or (3) defendant gives consent, either expressly or impliedly. *Id.* at 714, 723, 735. Compare *Kane v. New Jersey*, 242 U.S. 160 (1916) (defining express consent), with *Hess v. Pawloski*, 274 U.S. 352 (1927) (defining implied consent). For the recognized definition of what constitutes a “domicile” in jurisdictional issues, see also *Mas v. Perry*, 489 F.2d 1396, 1399 (5th Cir. 1974).

22. Standards of incorporation are based on *Pennoyer*, while standards of express and implied consent are based on *Kane* and *Hess*, respectively. *Hess*, 274 U.S. at 356; *Kane*, 242 U.S. at 167. But in evaluating a “doing business” standard, see MARCUS ET AL., *supra* note 2, at 685-86.

national scale increased, it became more difficult for courts to rely on traditional principles of personal jurisdiction when binding defendants, especially corporations.²³

A frustrating legal challenge that soon developed was a corporation’s ability to easily “be present” in multiple jurisdictions at one time.²⁴ As is still the case today, a corporation was not limited to conducting business in the state of its headquarters but could choose to engage in commerce across state lines.²⁵ Thus, determining whether or not a corporation was sufficiently “doing business” in a forum state to warrant personal jurisdiction under *Pennoyer’s* traditional methods began to fuel questions of fairness, as well as constitutionality.²⁶ In general, due to pressures of industrialization and a growing economy, jurisdiction over foreign-state corporations was becoming increasingly complex.²⁷ By the mid-twentieth century, an additional means for dealing with these issues was urgently needed.²⁸

*B. Shifting to Minimum Contacts: International Shoe v. Washington*²⁹

In *International Shoe*, the Supreme Court moved away from strict insistence on *Pennoyer* and revealed a supplemental test based on a defendant’s “minimum contacts” with the forum state.³⁰ The landmark formula developed by the Court in *International Shoe* requires sufficient “minimum contacts” with a forum so that the Court’s exercise of jurisdiction over a party does not offend

23. In *Hanson v. Denckla*, the U.S. Supreme Court stated, “[a]s technological progress has increased the flow of commerce between States, the need for jurisdiction over nonresidents has undergone a similar increase. At the same time, progress in communications and transportation has made the defense of a suit in a foreign tribunal less burdensome.” 357 U.S. 235, 250-51 (1958); see also MARCUS ET AL., *supra* note 2, at 685-86 (discussing jurisdiction over corporate defendants).

24. See Hagel, *supra* note 4, at 232.

25. See *id.*

26. *Id.*; see *Int’l Shoe Co. v. Washington*, 326 U.S. 310 (1945); see also *infra* note 31 and accompanying text (describing the need to adhere to the Due Process Clause of the U.S. Constitution in personal jurisdiction cases).

27. See Hagel, *supra* note 4, at 232-33.

28. *Id.*

29. 326 U.S. 310 (1945).

30. *Id.* at 316; see also *Hanson*, 357 U.S. at 251 (“[T]he requirements for personal jurisdiction over nonresidents have evolved from the rigid rule of *Pennoyer* . . . to the flexible standard of *International Shoe*.”).

traditional notions of “fair play and substantial justice” embodied in the Due Process Clause of the U.S. Constitution.³¹ With regard to corporations, the prior “doing business” test for personal jurisdiction was replaced by a more liberal “minimum contacts” analysis.³²

Although *International Shoe* is highly regarded for its advancement of a Constitutional requirement in personal jurisdiction, the case is not entirely clear on how to analyze “minimum contacts.”³³ For instance, the Court seems especially concerned that the defendant’s contact with the forum state be “continuous and systematic.”³⁴ Yet, the Court does not define a process for differentiating such behavior on a case-by-case basis while keeping in balance with the concepts of “fair play and substantial justice.”³⁵ Moreover, the decision does not address what kinds of limits, if any, should be placed on “minimum contacts” when establishing personal jurisdiction.³⁶ In effect, *International Shoe* creates a broad requirement of “minimum contacts” that lacks

31. As further elaborated by the Court in *International Shoe*.

[D]ue process requires only that in order to subject a defendant to a judgment . . . , if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend “traditional notions of fair play and substantial justice.”

326 U.S. at 316 (citing *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

32. See *id.* at 316. Although the facts of *International Shoe* involve a corporate defendant, the language used to describe the minimum contacts test also seems applicable to individuals and has been held to “apply generally to all defendants.” See MARCUS ET AL., *supra* note 2, at 691-92 n.1.

33. Justice Black, in a harsh dissent in *International Shoe*, finds that the majority has not presented a “workable standard” that can be used to analyze personal jurisdiction situations. 326 U.S. at 323 (Black, J., dissenting). Justice Black states, instead of providing a solid framework, “the Court . . . has engaged in an unnecessary discussion in the course of which it has announced vague Constitutional criteria applied for the first time to the issue before us. It has thus introduced uncertain elements confusing the simple pattern . . .” *Id.*

34. *Id.* at 320 (“Applying these standards, the activities carried on in behalf of appellant in the State of Washington were neither irregular nor casual. They were systematic and continuous . . .”). Ultimately, *International Shoe* meshes the “systematic and continuous” requirement with that of minimum contacts. See *id.*

35. See *id.* at 323 (Black, J., dissenting).

36. In *Hanson v. Denckla*, the Supreme Court addresses limits on the “flexible” jurisdiction requirements expressed in *International Shoe*. 357 U.S. 235, 251 (1958). *Hanson* enforces the need for minimum contacts to justify personal jurisdiction but couples this requirement with the need for purposeful availment. *Id.* at 253.

directive constraints.³⁷

Not surprisingly, the analytical framework that has evolved in applying this standard is far from straightforward as courts across the country have grappled with how to interpret "minimum contacts."³⁸ Many state legislatures initially responded to *International Shoe* by enacting "long-arm statutes" designating how states could bind foreign defendants.³⁹ Long-arm statutes, which still exist today, aim to validate a state's jurisdictional power over foreign defendants not actually present within a state's territory.⁴⁰ These laws describe the kinds of cases that merit exercising personal jurisdiction over a foreign party.⁴¹

Such statutes have tended to vary significantly from state to state, running the spectrum from broad to narrow.⁴² For consistency, the Supreme Court has placed significant limits on long-arm statutes, especially in products liability suits, so that an *International Shoe* "minimum contacts" analysis is almost always required.⁴³ Furthermore, by reviewing more personal jurisdiction

37. See *id.* at 251 ("[I]t is a mistake to assume that [the evolution to *International Shoe's* flexible standard] heralds the eventual demise of all restrictions on the personal jurisdiction of state courts.")

38. See Baker, *supra* note 3, at 713-21 (discussing circuit court responses to application of "stream of commerce" theories); see also Silberman, *supra* note 17, at 755 ("Justice Black did warn that the 'minimum contacts' test was an unworkable one, and he certainly was right in predicting that such elastic criteria would leave judges the 'supreme arbiters' of jurisdictional standards."). In fact, regarding the difficulties in interpreting personal jurisdiction, one commentator has questioned whether many lower courts have even bothered to adopt the different theories set forth by the Supreme Court. Michael E. Solimine, *The Quiet Revolution in Personal Jurisdiction*, 73 TUL. L. REV. 1 (1998) (studying approximately 1000 published state personal jurisdiction cases from 1970 to 1994 and finding that changes in the law have been rather modest).

39. MARCUS ET AL., *supra* note 2, at 697. Illinois enacted the first long-arm statute in 1955. *Id.*

40. *Id.*

41. *Id.*

42. *Id.* at 697, 701 n.2, 703 n.7. For example, California has historically maintained a very broad statute extending to the limit of the Constitution, while Illinois has been comparatively more restrictive. *Id.* at 697.

43. *Id.* at 704 n.8. Even if a state has a long-arm statute, the ultimate test for personal jurisdiction should still follow a minimum contacts analysis based on *International Shoe*. *Id.* Language in long-arm statutes will commonly indicate limits based on the Due Process Clause of the U.S. Constitution. See *id.* at 703 n.7; see also Shaffer v. Heitner, 433 U.S. 186, 207 (1977) ("The standard for determining whether an exercise of jurisdiction over the interests of persons is consistent with the Due Process Clause is the minimum-contacts standard elucidated in *International Shoe*.").

cases in light of *International Shoe*, the Supreme Court has developed additional criteria to aid in evaluating “minimum contacts” situations.⁴⁴

C. *Refining the Stream of Commerce Theory: World-Wide Volkswagen Corp. v. Woodson*⁴⁵

Specifically, in *World-Wide Volkswagen*, the Supreme Court applied a “stream of commerce” theory, suggesting that a manufacturer or distributor might be subject to suit in a forum state for “directly or indirectly” placing its products into the forum.⁴⁶ Notably, “seek[ing] to serve” the market through indirect contact was deemed acceptable to substantiate personal jurisdiction over a defendant.⁴⁷ However, *World-Wide Volkswagen* also asserted that a defendant must “purposefully avail[] itself” of the benefits of the forum state to logically foresee being “haled” into its courts;

44. See MARCUS ET AL., *supra* note 2, at 706. During the twenty years following *International Shoe*, the Supreme Court was virtually silent on issues of personal jurisdiction. *Id.* But, as more cases have since been decided, criteria for personal jurisdiction and minimum contacts have been refined. *Id.* Yet, at least one commentator has found such refinements to be “arbitrary particularizations.” *Id.* (citing Geoffrey C. Hazard, Jr., *A General Theory of State-Court Jurisdiction*, 241 SUP. CT. REV. 283 (1965)). Nonetheless, later cases have helped to shape factors determinative of minimum contacts. See, e.g., *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298-99 (1980) (substantiating the *stream of commerce* theory of minimum contacts); *Hanson v. Denckla*, 357 U.S. 235, 253 (1958) (describing that there must be “some act by which the defendant *purposefully avails* itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws” (emphasis added)); *McGee v. Int’l Life Ins. Co.*, 355 U.S. 220, 220-23 (1957) (finding sufficient minimum contacts through a *single contact* with the forum state).

45. 444 U.S. 286, 297-98 (1980).

46. *Id.* *World-Wide Volkswagen* addressed the “stream of commerce” issue on a national scale after it was initially introduced by the Supreme Court of Illinois in *Gray v. American Radiator and Standard Sanitary Corp.*, 176 N.E.2d 761 (Ill. 1961). The case involved interpretation of the Illinois long-arm statute, the first of its kind. See *supra* note 39. Accordingly, the *Gray* court held that a tort is committed wherever the resulting injury or damage occurs. 176 N.E.2d at 762. Specifically, the court stated, “the place of wrong is where the last event takes place which is necessary to render the actor liable.” *Id.* at 762-63. *Gray* never actually used the words “stream of commerce” in its opinion but relied on the phrase “in the ordinary course of commerce.” *Id.* at 766. Twenty years later, *World-Wide Volkswagen* seemed to invalidate *Gray*’s approach by declaring that foreseeability alone is not enough to justify minimum contacts. 444 U.S. at 295.

47. *World-Wide Volkswagen*, 444 U.S. at 295.

mere foreseeability alone was held inadequate.⁴⁸ The Court also rejected the idea that factors of reasonableness, such as the level of inconvenience to a defendant to litigate in a foreign state, could outweigh the importance of the purposeful availment requirement.⁴⁹

In other words, *World-Wide Volkswagen* articulated that if a product finds its way into a state, and subsequently causes injury there, this is *not enough* to subject a foreign manufacturer or distributor to personal jurisdiction in that state.⁵⁰ Instead, some effort to promote the product in the forum, albeit through *direct or indirect* channels, is required.⁵¹ Indeed, personal jurisdiction might be justified over a manufacturer or distributor that “delivers its products into the stream of commerce” with a *reasonable expectation* such products might be purchased in the forum state.⁵²

48. *Id.* at 297 (citing *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). *World-Wide Volkswagen* follows *Hanson's* lead in calling for purposeful availment by suggesting that if a foreign defendant sufficiently enjoys the benefits of a forum state, it might reasonably foresee being sued in that state. *Id.*; see also MARCUS ET AL., *supra* note 2, at 695 n.4 (discussing *Hanson*). In addition, *World-Wide Volkswagen* states, “[b]ut the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant’s conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.” 444 U.S. at 297.

49. *World-Wide Volkswagen*, 444 U.S. at 294. The *World-Wide Volkswagen* Court states other factors that are insufficient to prevail over the purposeful availment requirement:

Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.

Id.

50. *Id.* at 297-98.

51. *Id.* at 297. Stated in greater detail by the Court, “if the sale of a product . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States” *Id.*

52. *Id.* at 298.

D. *The Power Struggle Continues: Asahi Metal Industry Co. v. Superior Court of California*⁵³

Later, in *Asahi*, the Supreme Court went further, although in a split decision, to articulate a much stricter “stream of commerce” standard.⁵⁴ The facts of *Asahi* dealt with an indemnification suit against a Japanese manufacturer in California.⁵⁵ Ultimately, the holding of the case was broken into two major opinions, each written by Justice O’Connor.⁵⁶ The first, a plurality opinion, focused on “minimum contacts,” while the second, a majority opinion, focused on notions of “fair play and substantial justice.”⁵⁷

In the plurality opinion, O’Connor stated that “more” is required for minimum contacts besides merely placing a product into the stream of commerce, even if the defendant knew the product could be “swe[pt] . . . into the forum State.”⁵⁸ Accordingly, there must be some action on the part of the defendant to show “an intent or purpose to serve the market.”⁵⁹ The opinion then goes on to list several examples of how a defendant’s activities could be “purposefully directed” at the forum, including “designing the product for the market in the forum State, advertising in the forum State . . . or marketing the product through a distributor . . . in the forum State.”⁶⁰ Although *Asahi*’s minimum contacts analysis expressed a stricter standard than *International Shoe* and *World-Wide Volkswagen*, its authority is notably limited as a plurality opinion.⁶¹

In deciding the second issue, however, a majority of the justices agreed that exercising jurisdiction in California would “offend ‘traditional notions of fair play and substantial justice.’”⁶² Balancing factors of reasonableness, the Court placed considerable

53. 480 U.S. 102 (1987).

54. *Id.* at 103-04, 108-13 (plurality opinion).

55. *Id.* at 106-08.

56. *Id.* at 104.

57. *Id.* at 102-04.

58. *Id.* at 112 (“The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State.”).

59. *Id.*

60. *Id.*

61. *Id.* at 104.

62. *Id.* at 104-05, 113-16 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

emphasis on the burden of the defendant to defend in the forum state.⁶³ Moreover, the Court seemed to attach specific relevance to the fact that the defendant was an international corporation.⁶⁴ Even so, *Asahi* is vague as to whether or not it is merely stipulating as a general proposition a greater concern for foreign-national defendants.⁶⁵ As such, the degree of importance, if any, that should be placed on the existence of a foreign-national defendant in a personal jurisdiction situation remains uncertain.⁶⁶

In many ways, *Asahi* has done nothing but confuse personal jurisdiction matters even further with its split decision on the “stream of commerce” theory.⁶⁷ And, to a lesser extent, the case also falls short by neglecting to address the issue of foreign-national defendants with any real conviction.⁶⁸ Not surprisingly, *Asahi* has confounded many state courts, including those in Minnesota.⁶⁹

E. *Personal Jurisdiction in Minnesota*

Minnesota has a long-arm statute that permits personal jurisdiction over foreign defendants in compliance with federal Due Process, or the standards of *International Shoe*.⁷⁰ Indeed, the statute states in broad terms that personal jurisdiction in Minnesota applies to “foreign corporation[s] or any . . . nonresident individual[s] . . . transact[ing] any business within the state.”⁷¹ Even though the statute does not specifically insist that its requirements extend to the federal Constitution, case law has supported this determination since the statute’s inception in

63. *Id.* at 114 (“The unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders.”).

64. *Id.*

65. *See id.*

66. *See id.*

67. *See id.*; *see also* Baker, *supra* note 3, at 705 (stating that “*Asahi* did not help to clarify” stream of commerce standards).

68. *See Asahi*, 480 U.S. at 114.

69. *See* Juelich v. Yamazaki Mazak Optonics Corp., 682 N.W.2d 565, 572-73 (Minn. 2004); *see also* Baker, *supra* note 3, at 712 (“The circuit courts use varied approaches in applying the stream of commerce analysis in products liability cases that involve a nonresident defendant.”); Hagel, *supra* note 4, at 241-43 (discussing Minnesota methodologies).

70. *Juelich*, 682 N.W.2d at 570; *Valspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 410-11 (Minn. 1992).

71. MINN. STAT. § 543.19 subd. 1(b) (2002).

1967.⁷² Thus, Minnesota's long-arm statute is satisfied if the Constitutional requirements of personal jurisdiction from *International Shoe* are met.⁷³

Consequently, Minnesota has been challenged to develop its own process for analyzing personal jurisdiction in accordance with the principles of *International Shoe*.⁷⁴ In 1976, the Minnesota Supreme Court adopted the Eighth Circuit's approach in *Hardrives, Inc. v. City of Lacrosse*,⁷⁵ which provides the following five-factor test for evaluating personal jurisdiction situations: (1) quantity of contacts, (2) quality of contacts, (3) connection between contacts and cause of action, (4) the state's interest in providing a forum, and (5) the convenience of the parties.⁷⁶ Similar to the Eighth Circuit's interpretation, Minnesota has also expressed that the first three factors, which deal with minimum contacts, have greater authority over the last two factors, which deal with fair play and substantial justice.⁷⁷

While analyzing personal jurisdiction cases, Minnesota has also encountered its own share of "stream of commerce" situations.⁷⁸ Notably, in *Rostad v. On-Deck, Inc.*, decided two years before *Asahi* and relying on *World-Wide Volkswagen*, the Minnesota Supreme Court upheld jurisdiction over a New Jersey manufacturer whose product injured a Minnesota resident.⁷⁹ To reach its conclusion,

72. AM. LAW OF PROD. LIAB. 3d § 48:53 (Timothy E. Travers et al. eds., 3d ed. Supp. 2006) (citing Minnesota's long-arm statute in support of the notion that "[s]ome courts . . . only consider whether the extension of personal jurisdiction is consistent with due process, as the result of holdings that the state's long-arm statutes reach as far as due process will allow").

73. See *Juelich*, 682 N.W.2d at 570 ("Minnesota's long-arm statute . . . permits Minnesota courts to assert personal jurisdiction over defendants to the full extent of federal due process." (citing *Valspar Corp.*, 495 N.W.2d at 410)).

74. See Hagel, *supra* note 4, at 241-43.

75. 240 N.W.2d 814, 307 Minn. 290 (1976).

76. *Id.* at 817, 307 Minn. at 294 (citing *Aftanase v. Econ. Baler Co.*, 343 F.2d 187, 197 (8th Cir. 1965)).

77. See *Rostad v. On-Deck, Inc.*, 372 N.W.2d 717, 720 (Minn. 1985) (citing *Dent-Air, Inc. v. Beech Mountain Air Serv., Inc.*, 332 N.W.2d 904, 907 (Minn. 1983)). However, the notion that the first three factors are more significant than the latter two factors was also initially adopted from the Eighth Circuit's decision in *Aftanase*. 343 F.2d at 197.

78. See, e.g., *Juelich*, 682 N.W.2d at 571 (citing *Rostad*, 372 N.W.2d at 722); *In re Minn. Asbestos Litig.*, 552 N.W.2d 242 (Minn. 1996); *Welsh v. Takekawa Iron Works Co.*, 529 N.W.2d 471 (Minn. Ct. App. 1995).

79. See *Rostad*, 372 N.W.2d at 722. The New Jersey defendant was the manufacturer of metal weights used in the common production of baseball bats.

the court applied its five-factor test and found that personal jurisdiction was warranted.⁸⁰ The court's analysis placed considerable importance on the first requirement, or "quantity of contacts," finding the defendant's *indirect* contacts through the stream of commerce enough to maintain jurisdiction and withstand *World-Wide Volkswagen's* necessary showing of purposeful availment.⁸¹ The defendant's lack of *direct* contacts with Minnesota did not significantly matter.⁸²

The *Rostad* court went on to evaluate the remaining four factors in support of jurisdiction over the New Jersey defendant.⁸³ In particular, the court acknowledged that it had afforded less weight in its application of the last two requirements, dealing with fair play and substantial justice, compared to the first three requirements, dealing with minimum contacts.⁸⁴ In general, the Minnesota Supreme Court in *Rostad* followed *World-Wide Volkswagen's* "stream of commerce" approach and held that the defendant had purposefully availed itself of "the benefits of doing business in Minnesota."⁸⁵

Id. at 718. One of these weights flew off a bat during a Minnesota softball game, injuring the plaintiff umpire and ultimately leading to a products liability claim. *Id.*

80. *Id.* at 719-20.

81. *Id.* The defendant's distribution contracts and marketing endeavors were found to be deliberate efforts worthy of establishing a national market for metal bat-weights, which included Minnesota. *Id.*

82. *Id.* at 720-21.

83. *Id.* at 721-22. *Second*, in evaluating the nature and "quality of the contacts," the *Rostad* court found it especially significant that thousands of bats containing the defendant's metal-weights were actually sold within the state. *Id.* at 722. Furthermore, the company required its trademark, as well as a picture of its president, to be placed on every package. *Id.* In so doing, it "thrust its corporate image into the jurisdiction, both by its own packaging requirements and the actions of its distributors, and profited." *Id.* *Third*, in analyzing the "connection of the contacts with the cause of action," the court saw the relationship as overwhelmingly satisfied since the defendant had actively sought to create a national market and should have known it would include Minnesota. *Id.* Then, the court turned to the remaining two factors, while affording them lesser consideration compared to the first three. *Id.* Under the *fourth* requirement, the court found "Minnesota's interest in litigating" the case "obvious," since it was the site of the accident and home of the "severely injured." *Id.* Then, in balancing the *fifth* consideration, the "convenience of the parties," it found Minnesota jurisdiction the fairest under the circumstances, since only the defendant resided elsewhere. *Id.*

84. *Id.*

85. *Id.* at 720, 722.

However, in analyzing the stream of commerce approach with regard to foreign-national defendants, the Minnesota judiciary has been reluctant to find sufficient minimum contacts, especially through indirect associations.⁸⁶ For example, when dealing with a Japanese manufacturer in a products liability case, *Welsh v. Takekawa Iron Works Co.*,⁸⁷ the Minnesota Court of Appeals provided a critical stream of commerce analysis, emphasizing the need for a clear showing of purposeful availment.⁸⁸ Indeed, the court seemed to be moving towards a stricter standard, though citing *Asahi* only once, by asserting that a state's authority might be limited when exercising personal jurisdiction over international defendants.⁸⁹

A year later, the Minnesota Supreme Court took its turn at deciding the issue of personal jurisdiction over foreign-national defendants with *In re Minnesota Asbestos Litigation*.⁹⁰

Notably, the Minnesota Supreme Court *did not* authorize jurisdiction over an Australian defendant by way of indirect

86. See *In re Minn. Asbestos Litig.*, 552 N.W.2d 242 (Minn. 1996); *Welsh v. Takekawa Iron Works Co.*, 529 N.W.2d 471 (Minn. Ct. App. 1995).

87. 529 N.W.2d at 471. Plaintiff *Welsh*, a Minnesota citizen, had been "severely injured" while operating a rip-saw at his place of employment. *Id.* at 472. The rip-saw first entered the stream of commerce when Japanese defendant, *Takekawa*, manufactured and shipped the product to an Arizona distributor. *Id.* Subsequently, the rip-saw was sold to a Minnesota dealer and ultimately purchased by plaintiff's Minnesota employer. *Id.*

88. *Id.* at 474. The court stressed the need for clear indications, more than just unilateral activities, of efforts to "directly or indirectly" serve the Minnesota market. *Id.* Specifically, the *Welsh* court stated that "[j]urisdiction cannot arise via the unilateral activity of someone other than the defendant." *Id.* (citing *Helten v. Arthur J. Evers Corp.*, 372 N.W.2d 380, 383 (Minn. Ct. App. 1985)). This notion was earlier stressed by the Minnesota Court of Appeals in *Domtar, Inc. v. Niagara Fire Insurance Co.*, which states, "[a] customer's unilateral act of bringing the corporation's product into the forum state is insufficient to create personal jurisdiction." 518 N.W.2d 58, 61 (Minn. Ct. App. 1994) (citing *World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 295-96 (1980)). In addition, the court emphasized that because the defendant's contacts with Minnesota were so few and its corresponding sales in the state so insignificant, the court could not logically infer purposeful availment. *Welsh*, 529 N.W.2d at 474-75.

89. *Welsh*, 529 N.W.2d at 475 ("We must, however, exercise caution in asserting jurisdiction over alien corporations, recognizing the additional burden experienced by one forced to defend itself in a foreign system." (citing *Asahi Metal Indus. Co. v. Superior Court of Cal.*, 480 U.S. 102, 114 (1987))).

90. 552 N.W.2d 242 (Minn. 1996). The personal injury lawsuit, brought by 187 plaintiffs, alleged that a group of defendants, including both resident companies and a foreign-national corporation, had caused significant harm by manufacturing, selling, or distributing asbestos materials for use in Minnesota. *Id.* at 244.

contacts.⁹¹ The court characterized the narrow difference from its decision in *Rostad* by explaining that foreseeability had existed in *Rostad* through indirect contacts since the distributor had purposely sold the products in Minnesota on behalf of the manufacturer.⁹² Furthermore, *In re Minnesota Asbestos Litigation* stressed that exercising jurisdiction over the defendant would offend "traditional notions of fair play and substantial justice."⁹³

Although Minnesota has more recently seemed to call for stricter standards in establishing minimum contacts through the stream of commerce theory, it has also been reluctant to assertively base its decisions on guidance from *Asahi*.⁹⁴ As a result, the application of personal jurisdiction standards in Minnesota has lacked affirmative direction.⁹⁵ In summary, *Rostad*, *Welsh*, and *In re Minnesota Asbestos Litigation*, as well as other Minnesota predecessor cases, have fallen short of providing a needed interpretation of Minnesota's stream of commerce position after *Asahi*; that is, until *Juelich*.

91. *Id.* at 244. The Minnesota Supreme Court was unable to find merit in the plaintiffs' and court of appeals' contention that indirect contacts could be inferred through the international defendant's sale of raw asbestos materials to another manufacturer for use in products that were sold to Minnesota dealers. *Id.* at 247-48. In order for the Australian defendant to be on the hook, the supreme court called for more meaningful contact with the forum state than merely selling raw material to a manufacturer for use in a finished product; no matter that the injurious product was ultimately sold into the Minnesota marketplace. *Id.* at 246-47. The manufacturer in this case was not equivalent to defendant's distributor, so personal jurisdiction could not be justified through indirect contacts. *Id.*

92. *Id.* at 247. "Unlike the defendants in *Rostad*, the record does not indicate that [the distributor's] contacts with Minnesota were on behalf of [the manufacturer] or with [the manufacturer's] approval." *Id.* However, in comparison, one commentator has found the analysis of *In re Minnesota Asbestos Litigation* rather troubling, concluding that it "furthered the confusion for those litigating in Minnesota." Hagel, *supra* note 4, at 231-32 (arguing that the court did not adequately explain its reasoning).

93. 552 N.W.2d at 248. Yet, in its analysis, the court never references greater degrees of unfairness in binding foreign-national defendants, nor does it even cite *Asahi*. *See id.*

94. *See id.*

95. *See id.*

III. THE *JUELICH* DECISIONA. *Facts and Procedural History*

In *Juelich v. Yamazaki Mazak Optonics Corp.*,⁹⁶ the plaintiff was injured in Minnesota while repairing a component part of a laser-cutting machine.⁹⁷ Both the part and the laser-cutting machine were manufactured in Japan.⁹⁸ Consequently, the plaintiff brought products liability and personal injury suits against (1) the component part manufacturer, Meikikou, and (2) the machine manufacturer, Yamazaki Mazak Optonics/Mazak Nissho Iwai (YMO/MANI).⁹⁹

In *Juelich*, the stream of commerce chain began with Meikikou, a Japanese corporation that manufactured the original component part, a scissor-lift table, at its factory in Japan.¹⁰⁰ YMO/MANI then created a laser-cutting device, using Meikikou's scissor-lift table as a component part.¹⁰¹ Subsequently, the laser-cutting machine made its way into the Midwest when YMO/MANI sold it to a Minnesota supplier, Gladwin Machinery & Supply Company (Gladwin).¹⁰² Gladwin then sold the machine to plaintiff's employer, also a Minnesota company, Aries Precision Sheet Metal Company (Aries).¹⁰³ As a result of the sale to Aries, YMO/MANI's service specialist installed the laser-cutting machine at Aries and gave

96. 682 N.W.2d 565 (Minn. 2004).

97. *Id.* at 568. In summary, plaintiff was injured in Minnesota while repairing Meikikou's product, a scissor-lift table, which had been used to manufacture Yamazaki Mazak Optonics/Mazak Nissho Iwai's (YMO/MANI's) laser-cutting machine. *Id.* Meikikou did not sell directly to a Minnesota supplier but placed its product into the stream of commerce through YMO/MANI. *Id.*

98. *Id.*

99. *Id.* For the sake of simplicity, Yamazaki Mazak Optonics and Mazak Nissho Iwai (YMO/MANI) are treated in this case note as one party. In actuality, YMO and MANI are two separate, but affiliated, companies. YMO is the Japanese manufacturer of the laser-cutting device that contained Meikikou's component part. *Id.* at 568. MANI is YMO's Illinois subsidiary corporation, an international distributor that sold the laser-cutting device to the United States. *Id.*

100. *Id.*

101. *Id.* Through its distribution affiliates, Meikikou sold the part to YMO, a Japanese manufacturer. *Id.* The laser-cutting device was marketed as a packaged system, known as the "Super Turbo X510 System." *Id.*

102. *Id.* Evidence provided at the time of the dispute indicated that a total of 122 laser-cutting machines had been sold in the United States, including 17 in Minnesota. *Id.*

103. *Id.*

plaintiff and another employee specific training in its use.¹⁰⁴

After plaintiff brought his original action, YMO/MANI responded with a cross-claim against Meikikou.¹⁰⁵ Meikikou then moved to dismiss plaintiff's claims and YMO/MANI's cross-claim for lack of personal jurisdiction.¹⁰⁶ Subsequently, all claims against Meikikou were dismissed by the district court.¹⁰⁷ The court of appeals affirmed by relying on Justice O'Connor's "stream of commerce" analysis in *Asahi*.¹⁰⁸ Plaintiff went on to settle his claims with YMO/MANI and did not seek further review.¹⁰⁹ As such, the only issue left for the Minnesota Supreme Court to evaluate in *Juelich* was the motion to dismiss YMO/MANI's cross-claim for lack of personal jurisdiction.¹¹⁰

B. The Minnesota Supreme Court's Decision

1. A Personal Jurisdiction Platform

Basically, the *Juelich* opinion is organized into a "guidebook" for analyzing personal jurisdiction cases in Minnesota.¹¹¹ At the

104. *Id.*

105. *Id.* at 569.

106. *Id.*

107. *Id.* Meikikou's motion for dismissal, which was granted by the district court, was primarily based on the affidavit of the company's Managing Director and General Manager of Development, Tsutomu Odaguchi. *Id.* In his deposition, Odaguchi testified that Meikikou (1) lacks any involvement with the scissor-lift component parts once they leave the factory; (2) does not sell its scissor-lift tables directly to the United States; (3) sells the scissor-lift tables only to Japanese companies, some of which in turn use the parts in products that are sold to the United States; (4) makes English language warning labels but only produces Japanese language operating manuals; and (5) would install any necessary parts to comply with safety standards when YMO alerted it of a product sale (containing a Meikikou component party) to another country. *Id.*

108. *Id.* Furthermore, *Juelich* states that "[t]he court of appeals concluded that *Asahi* 'clarified the stream of commerce theory,' quoting from Justice O'Connor's plurality opinion that the 'placement of a product into the stream of commerce, without more, is not an act of the defendant purposely directed toward the forum State.'" *Id.* at 569 (quoting *Asahi Metal Indus. Co. v. Superior Court of Cal.*, 480 U.S. 102, 112 (1987)).

109. *Id.* at 569.

110. *Id.*

111. *See id.* at 565. The opinion opens with an introduction describing the primary issues, facts and procedural history of the *Juelich* case. *Id.* at 568-69. It is then neatly organized into two parts, including sub-sections, outlining the steps needed for analyzing Minnesota personal jurisdiction disputes. *Id.* at 569-75. Part

outset, the court notes that the major issue, the jurisdictional validity of YMO/MANI's cross-claim, is keenly similar to the issue decided in *Asahi*.¹¹² Indeed, the comparison of *Juelich* to *Asahi* is made in the first sentence of the opinion, seeming to set the stage for an evaluation of Minnesota personal jurisdiction law in juxtaposition with the infamous U.S. Supreme Court decision.¹¹³ The opening of *Juelich* goes on to introduce the facts and procedural background of the case, after which it is split into two parts.¹¹⁴ In summary, Part I serves to confirm Minnesota's personal jurisdiction rules, while Part II applies these rules in light of *Juelich*.¹¹⁵

The Minnesota Supreme Court creates a legal framework for personal jurisdiction by providing a historical overview of jurisdictional law, reaffirming Minnesota's five-factor test modeled after the Eighth Circuit, confirming Minnesota's use of the "stream of commerce" theory with reliance on *Rostad*, and emphasizing the importance of "traditional notions of fair play and substantial justice."¹¹⁶ The court begins by reviewing standard personal jurisdiction law, aptly modeled after *International Shoe*.¹¹⁷ First, it references its long-arm statute, which "permits Minnesota courts to assert personal jurisdiction over defendants to the full extent of federal due process."¹¹⁸ Second, it declares that such "[d]ue process requires that the defendant have 'certain minimum contacts' with the forum state and that the exercise of jurisdiction over the defendant does not offend 'traditional notions of fair play

I provides an introduction of personal jurisdiction with three sub-headings, *Minnesota's Five-Factor Test*, *The Stream of Commerce Theory of Minimum Contacts*, and *Traditional Notions of Fair Play and Substantial Justice*. *Id.* at 569-73. Part II goes on to analyze each of the components of the five-factor test as separate sub-headings: (1) *The quantity of contacts with the forum state*, (2) *The nature and quality of Meikikou's contacts*, (3) *The connection of the cause of action with these contacts*, (4) *The interest of the state in providing a forum*, and (5) *The convenience of the parties*. *Id.* at 573-76. Justice Anderson's concurring opinion follows the conclusion of the *Juelich* majority. *Id.* at 576-78.

112. *Id.* at 567.

113. *Id.*

114. *See supra* note 111 and accompanying text.

115. *Juelich*, 682 N.W.2d at 569, 573.

116. *Id.* at 569-73.

117. *Id.* at 570.

118. *Id.* (citing *Valspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 410 (Minn. 1992)).

and substantial justice.”¹¹⁹

To analyze the Constitutional requirements of personal jurisdiction according to *International Shoe*, the court firmly acknowledges its use of the Eighth Circuit’s five-factor test: (1) quantity of contacts, (2) quality of contacts, (3) connection between contacts and cause of action, (4) the state’s interest in providing a forum, and (5) the convenience of the parties.¹²⁰ Additionally, the court connects the five-factor test to the standards of *International Shoe* by stating that the first three factors measure minimum contacts, while the last two factors measure reasonableness according to “traditional notions of fair play and substantial justice.”¹²¹ It also expresses reliance on the First Circuit’s “sliding scale” approach to interpreting the “interplay” between minimum contacts and reasonableness.¹²² In essence, the stronger a plaintiff’s case regarding minimum contacts, the more a defendant will need to prove regarding the unreasonableness of the situation, and vice versa.¹²³

2. *The Stream of Commerce Approach*

In determining how to apply the first three factors, the Minnesota Supreme Court revisits its “stream of commerce” theory of minimum contacts in light of *Asahi*.¹²⁴ First, describing its decision in *Rostad*, the court recognizes the “stream of commerce” concept utilized by *World-Wide Volkswagen*, stating that minimum contacts could indeed be “indirect.”¹²⁵ The court goes so far as to quote its finding in *Rostad* that “[the manufacturer’s] distribution contacts and marketing efforts were calculated attempts to create a national market for [its] product, a market which specifically includes Minnesota.”¹²⁶ In addition, the court makes a lengthy

119. *Id.* (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

120. *Id.* (citing *Hardrives, Inc. v. City of Lacrosse*, 307 Minn. 290, 294, 240 N.W.2d 814, 817 (1976)).

121. *Id.* (citing *Ticketmaster-New York, Inc. v. Alioto*, 26 F.3d 201, 210 (1st Cir. 1994)).

122. *Id.*

123. *Id.*

124. *Id.* at 571.

125. *Id.* (citing *Rostad v. On-Deck, Inc.*, 372 N.W.2d 717, 722 (Minn. 1985)). Interestingly, *Juelich* does not reference its decision in *In re Minnesota Asbestos Litigation* when citing *Rostad*, which relied on a more narrow interpretation of *World-Wide Volkswagen*’s allowance for indirect contacts. *See id.*

126. *Id.* The court notes that “the decision in *Rostad* relied upon the ‘stream-

citation to *World-Wide Volkswagen's* “stream of commerce” analysis, emphasizing the importance of “purposeful availment.”¹²⁷

Again, the opinion compares *Juelich* to *Asahi*, noting their “strikingly similar” factual situations.¹²⁸ But due to the uncertainty of a plurality opinion, the court specifically declines to use *Asahi's* stricter test for determining minimum contacts, stating, “[b]ecause the *Asahi* Court failed to reach a majority . . . it was error for the court of appeals to rely on Justice O'Connor's ‘something more’ approach in this case.”¹²⁹ Nonetheless, the *Juelich* court is sure to acknowledge that a majority of the Justices in *Asahi* agreed that exercising personal jurisdiction over the Japanese defendant would “offend ‘traditional notions of fair play and substantial justice.’”¹³⁰ Furthermore, the court notes its own concern with placing burdens on international defendants.¹³¹

3. *A Closer Look at the Five-Factor Approach*

The court finds its five-factor test to be the soundest approach for analyzing personal jurisdiction in Minnesota.¹³² It reasons that the first three factors, “which trace their roots to the landmark decision of *International Shoe* and its progeny,” continue to provide the proper analysis for minimum contacts.¹³³ The court recognizes minimum contacts through indirect activity if compliance with purposeful availment is met but rejects *Asahi's* stricter “something more” requirement.¹³⁴ Yet, in recognition of the Justices' agreement in *Asahi*, the court reasons that factors four and five are sufficient for weighing “fair play and substantial justice” and are

of-commerce theory' enunciated by the U.S. Supreme Court in *World-Wide Volkswagen Corp. v. Woodson*.” *Id.*

127. *Id.*

128. *Id.* The court notes that both *Asahi* and *Juelich* specifically dealt with indemnification suits between foreign-national defendants. *Id.* The court also notes the timing in comparison to Minnesota's analysis of stream of commerce situations, since *Asahi* was decided two years after *Rostad*. *Id.*

129. *Id.* at 572.

130. *Id.* at 573 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

131. *Id.* at 576.

132. *Id.* at 573. The court notes that “[t]o determine whether Meikikou is subject to personal jurisdiction in Minnesota, [it] will apply the five-factor test.” *Id.*

133. *Id.* at 572.

134. *Id.*

consistent with ensuring Constitutional Due Process.¹³⁵

The court goes on to analyze potential jurisdiction over Meikikou in Minnesota by each of the five factors.¹³⁶ In its investigation of the first three factors, the court does not find sufficient minimum contacts between Meikikou and Minnesota.¹³⁷ First, the court considers the “quantity of contacts” insignificant, since Meikikou’s interactions with Minnesota are far less than those at issue in both *Rostad* and *Asahi*.¹³⁸ Second, in measuring the “quality of contacts,” the court is unable to support purposeful availment, as Meikikou lacks any real “influence” or “control” over the distribution of the laser-cutting machine in Minnesota.¹³⁹ Third, given the shortage of purposeful availment and the “mere unilateral activity” of numerous suppliers in distributing Meikikou’s product, a proper “connection between the contacts and the cause of action” does not exist.¹⁴⁰

In addition, in balancing factors four and five, the court also holds that the demands on Meikikou in asserting jurisdiction are remarkably unjust under the circumstances.¹⁴¹ For example, when assessing factor four, “the state’s interest in providing a forum,” the court finds the situation “virtually identical to that in *Asahi*” and cannot gather any logical reason as to why a suit of indemnification between two Japanese companies should be litigated in Minnesota.¹⁴² Then, in looking at factor five, “convenience of the parties,” the court holds that the burdens to Meikikou to defend itself in a foreign country far outweigh any remaining interest

135. *Id.* at 572-73.

136. *Id.* at 573-76.

137. *Id.* at 573-74.

138. *Id.* The fact that there were seventeen Meikikou component parts located in Minnesota and a total of 122 located in the United States was not enough to satisfy the “quantity of contacts” requirement. *Id.*

139. *Id.* at 574. The opinion states that Meikikou “took no initiative in developing a United States market . . . [and] its actions fall short of the affirmative efforts to serve, directly or indirectly, the market for its product in the United States, as required by *World-Wide Volkswagen*.” *Id.* At particular issue is the existence and use of Meikikou’s website to promote its component part. *Id.* However, the court determined that the website was “passive” and not in support of jurisdiction. *Id.*; see also MARCUS ET AL., *supra* note 2, at 756-59 (describing recent developments in minimum contacts and the Internet).

140. *Juelich*, 682 N.W.2d at 575.

141. *Id.* at 575-76.

142. *Id.* at 575.

Minnesota has in controlling the cross-claim.¹⁴³

In the end, the cross-claim asserted against Meikikou by YMO/MANI does not pass Minnesota's test.¹⁴⁴ Yet, the *Juelich* decision seems to do more than merely uphold a five-factor formula. Indeed, it confirms Minnesota's position in light of the U.S. Supreme Court's most important personal jurisdiction cases, *Asahi* in particular, and provides guidance for analyzing stream of commerce situations.¹⁴⁵

IV. ANALYSIS OF THE *JUELICH* DECISION

The *Juelich* case is significant because it provides the Minnesota legal community with a definitive roadmap for handling personal jurisdiction disputes. Most importantly, it represents a direct confrontation and ultimate denial of *Asahi*'s stricter use of the "stream of commerce" theory.¹⁴⁶ Even though *Juelich* seems to avoid an underlying issue of fair play and substantial justice with regard to foreign-national defendants, it succeeds overall in enhancing Minnesota personal jurisdiction law.

A. *The Stream of Commerce Issue*

By the time *Juelich* reached the Minnesota Supreme Court, it involved only a cross-claim.¹⁴⁷ Nonetheless, the court used the case as an opportunity to take on *Asahi*'s infamous "stream of commerce" theory of minimum contacts. In fact, *Juelich* rejects the court of appeals' use of this stricter standard primarily due to the Justices' inability to provide a majority opinion in *Asahi*.¹⁴⁸ By making a sound statement against the use of *Asahi*'s stream of commerce theory, the supreme court ended pre-existing confusion in Minnesota regarding the issue.¹⁴⁹ In addition, *Juelich* leaves the

143. *Id.* at 576. The court notes that "[g]iven that the transaction on which the indemnification claim is based took place in Japan and Meikikou delivered the lift table in Japan, YMO/MANI have 'not demonstrated that it is more convenient to litigate its indemnification claim' in Japan." *Id.* (citing *Asahi Metal Indus. Co. v. Super. Ct. of Cal.*, 480 U.S. 102, 114 (1987)).

144. *Id.*

145. *See id.* at 570-73.

146. *Id.* at 572.

147. *Id.* at 569.

148. *Id.* at 572.

149. *See supra* Part II.E.; *see also* Hagel, *supra* note 4, at 241-42 (discussing Minnesota's struggles with personal jurisdiction).

door open for “indirect” minimum contacts by reaffirming its prior decision in *Rostad*, which had relied on the U.S. Supreme Court’s findings in *World-Wide Volkswagen*.¹⁵⁰ For example, when describing *Asahi*’s stricter approach in detail, the supreme court notably referred to Justice Brennan’s concurrence, which had revisited *World-Wide Volkswagen*’s acceptance of either “direct or indirect” contacts.¹⁵¹

B. The Fair Play and Substantial Justice Issue

On the other hand, the court was quick to utilize *Asahi*’s majority findings on “fair play and substantial justice” in analyzing personal jurisdiction over foreign defendants, especially between two international companies.¹⁵² In comparison, the court stated, “like *Asahi*, it is ‘not at all clear at this point’ that Minnesota law should govern the question of whether a Japanese corporation should indemnify another Japanese corporation.”¹⁵³ Indeed, the court never wavered in its findings of significant unfairness to Meikikou, an international component part manufacturer.¹⁵⁴ Thus, like the Court in *Asahi*, the Minnesota Supreme Court was also reluctant to extend the principle of personal jurisdiction to international, third-party component manufacturers in indemnification suits.¹⁵⁵ Although the court might hint that the state’s interest could be different if the plaintiff were still seeking jurisdiction over Meikikou, given the procedural posture of the case, it was not required to analyze this potential situation, nor did it choose to do so.¹⁵⁶ As such, the “strikingly similar” factual situations of *Juelich* and *Asahi* seem to work against defining a clearer picture for Minnesota regarding the growing issue of foreign-national defendants.¹⁵⁷ Indeed, the narrow, factual resemblance of the two cases allowed the Minnesota Supreme Court to neglect a broader issue of jurisdiction over international

150. *Juelich*, 682 N.W.2d at 571.

151. *Id.* at 572.

152. *Id.* at 575-76.

153. *Id.* at 575.

154. *Id.* at 576.

155. *Id.* at 575.

156. *Id.* The court finds that even if plaintiff were still a party to the case, the unfairness in bringing Meikikou into court would still outweigh the state’s interest in allowing the cross-claim to proceed. *Id.*

157. *Id.* at 571.

parties.¹⁵⁸ Thereby, the Minnesota Supreme Court left certain questions unanswered, including: What if the case is *not* a cross-claim but a legitimate claim between a Minnesota citizen and an international defendant? How should Minnesota courts interpret the stream of commerce theory under such hypothetical circumstances? Unfortunately, *Juelich* does not specifically address these lingering propositions.

C. *Asahi Criticism?*

Even though *Juelich* states how to deal with the U.S. Supreme Court's indecisiveness, it does not directly challenge the analysis of *Asahi*. In fact, it avoids the notion of whether or not the five-factor scale should tip back the other way, with unfairness taking precedence over minimum contacts when evaluating jurisdiction over foreign-national parties.¹⁵⁹ Interestingly, in *Juelich*, Justice Paul H. Anderson's concurring opinion seems to shed more light on some of *Asahi's* problems, especially regarding foreign-national defendants, by finding sufficient minimum contacts with the forum as well as substantial unfairness to the defendant.¹⁶⁰

Although Justice Anderson's concurring opinion agrees with the majority findings regarding factors four and five, it sides with Justice Brennan's concurrence in *Asahi*, which states that the suit represented "one of those rare cases in which minimum requirements inherent in the concept of 'fair play and substantial justice' . . . defeat the reasonableness of jurisdiction."¹⁶¹ Thus, Justice Anderson did not find it necessary to even approach the minimum contacts analysis in such a situation, as unfairness should take precedence over minimum contacts.¹⁶²

Yet, in comparing the majority's analysis to his own examination of the first three factors and also analogizing to *Rostad*, Justice Anderson found sufficient evidence of minimum contacts.¹⁶³ One notable fact in his reasoning was that Meikikou had actually purchased an insurance policy to cover U.S. products-

158. *Id.* at 575.

159. *See id.* at 577 (Anderson, Paul, J., concurring).

160. *Id.* at 576-78.

161. *Id.* at 576 (quoting *Asahi Metal Indus. Co. v. Superior Court of Cal.*, 480 U.S. 102, 116 (1987) (Brennan, J., concurring)).

162. *Id.* at 577.

163. *Id.* at 577-78.

liability claims.¹⁶⁴ Justice Anderson further emphasized "that the trend toward globalized business must factor into our analysis."¹⁶⁵

In summary, the concurring opinion delves deeper into the legacy of *Asahi* by attempting to interpret its effect on current developments in economics and global business.¹⁶⁶ Certainly, the concurrence makes a valid point, given that Minnesota maintains a healthy business environment with nineteen Fortune 500 companies and a strong medium-sized business base that includes relevant interaction with international companies.¹⁶⁷ It can also be logically assumed that Minnesota commerce and dealings with foreign-national corporations will continue to grow in frequency and substance.¹⁶⁸ As such, a clearer understanding of how to handle disputes between Minnesota citizens and international parties from the *Juelich* majority might have been welcomed by both the Minnesota business and legal communities.

V. CONCLUSION

Even though *Juelich* represents an analysis of a cross-claim, its resulting opinion is quite significant, providing a comprehensive overview of Minnesota's personal jurisdiction position. Without a doubt, confusing U.S. Supreme Court opinions such as *Asahi* have made it difficult for analyzing theories of minimum contacts with regard to foreign defendants, especially when it comes to the "stream of commerce" theory.¹⁶⁹ But despite these complexities in the current state of the law, the holding of *Juelich* manages to give Minnesota a platform for dealing with personal jurisdiction. Although it falls short of providing greater insight into global economic trends, its overall outcome is undeniably important, particularly with regard to applying the stream of commerce analysis to corporations.

As Minnesota's first real interpretation of *Asahi*, *Juelich* rightly

164. *Id.* at 577.

165. *Id.* at 578.

166. *Id.* at 577-78.

167. Minnesota Department of Employment and Economic Development, Business Trends, <http://www.deed.state.mn.us/facts/businessstrends.htm> (last visited Apr. 25, 2006).

168. See Minnesota Department of Employment and Economic Development, Global Competitiveness, <http://www.deed.state.mn.us/facts/global.htm> (last visited Apr. 25, 2006).

169. See *supra* Part II.B.-D.

rejects a stricter “stream of commerce” standard and suggests that indirect contacts might warrant jurisdiction under reasonable circumstances.¹⁷⁰ *Juelich* also reaffirms Minnesota’s five-factor test, giving structure to Minnesota personal jurisdiction law. Indeed, its analysis of minimum contacts clearly demonstrates that applying “stream of commerce” theories is no simple task.¹⁷¹ But, thanks to *Juelich*, Minnesota is no longer left to the uncertainty of swimming up the “stream of commerce.” At least until the next major evolution in the law, Minnesota has a sound methodology for interpretation of its personal jurisdiction cases.

170. *See supra* Part IV.A.

171. *See Juelich*, 682 N.W.2d at 565. The different results of the majority and concurring opinions in interpreting minimum contacts reveals significant potential for variance, even when analyzing the same fact situation under the same “stream of commerce” theory. *Id.*